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Letter dated 20 June 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 10 April 2002 (S/2002/383).

The Counter-Terrorism Committee has received the attached supplementary report from the Republic of Korea, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 19 June 2002 from the Permanent Representative of the Republic of Korea to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

With reference to your letter dated 22 March 2002 requesting further information on the implementation of Security Council resolution 1373 (2001), I have the honour to enclose herewith a response from the Government of the Republic of Korea concerning the aforementioned (see enclosure).

(*Signed*) **Sun** Joun-yung
Ambassador
Permanent Representative

Second report of the Republic of Korea to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001*

On 24 December 2001, the Republic of Korea has presented its first report to the Counter-Terrorism Committee of the United Nations Security Council on measures it has taken to implement Security Council resolution 1373 (2001) of 28 September 2001.

The Counter-Terrorism Committee, having considered the report, raised a number of questions to the Republic of Korea through the letter dated 22 March 2002 from the Chairman, to which the Republic of Korea presents the second report herewith attached as a response.

Questions and Answers

1. **Sub-paragraph 1(a):**

A. Please could the Republic of Korea outline the legislative provisions and procedures which exist for monitoring suspicious financial transactions.

- Article 4 of the Financial Transaction Reports Act 2001 provides that all financial institutions shall report without delay any suspicious financial transactions, if there is a reasonable basis for suspicion, to the Korea Financial Intelligence Unit (KoFIU), an independent body in charge of monitoring money-laundering activities.

* The appendices are on file with the Secretariat and are available for consultation.

- The above-mentioned Act further stipulates in Article 7 that the KoFIU shall review and analyze the reported suspicious financial transactions and provide relevant information to law enforcement agencies such as the Prosecutor-General of the Public Prosecutor's Office, Commissioner-General of the National Police Agency, Commissioner of the National Tax Service, Commissioner of the Korea Customs Office, or Financial Supervisory Committee.

- Law enforcement agencies which have received information from the KoFIU shall conduct an appropriate investigation. If they found sufficient evidence against the alleged perpetrators, they would take necessary steps, including prosecution, in accordance with the Criminal Act.

B. What are the vigilance (transaction-reporting) obligations of financial intermediaries, including those outside the financial sector(e.g. lawyers) that contribute, in particular, to the prevention of economic and financial transactions with terrorist or other criminal aims (as distinct from identifying the proceeds of illicit activity)?

- Although funds or assets in connection with an act violating Article 5 paragraph 2 in the Act on the Punishment of Violent Actions etc, that is, either an act or an attempted act to supply funds in order to organize and maintain a criminal group, may not be considered as proceeds arising from criminal actions, such funds or assets will be included in the concept of "criminal proceeds" stipulated in the Proceeds of Crime Act 2001, and in turn the "criminal proceeds" correspond to "illegal property" as stipulated in the Financial Transaction Reports Act.

- Hence, in the case of financial transactions involving criminal organizations such as a terrorist group, a financial institution involved in such transactions will be obliged to make a financial transaction report regardless of whether or not the "proceeds resulted from criminal action", as long as such transactions fall under financial transactions constituting an act violating Article 5 paragraph 2 of the Act on the Punishment of Violent Actions etc.

C. What are the penalties which may be incurred, and have any already been imposed?

- Article 3 of the Proceeds of Crime Act 2001 provides that the activities of money laundering aimed at providing funds to criminal organizations or groups shall be punished by imprisonment for not more than five years, or a fine not exceeding thirty million won.

- Article 17 of the Financial Transaction Reports Act 2001 rules that all financial institutions failing to report without delay those financial transactions suspected of illegal property or money laundering activities shall be punished by a non-penal fine of no more than five million won.

- The above penalties have not yet been imposed because both the Financial Transaction Reports Act and the Proceeds of Crime Act only came into effect as of 28 November 2001.

2. Sub-paragraph 1(b):

A. It is not clear from the report what provisions exist in the Republic of Korea for the suppression of the financing of terrorism. Please outline these provisions.

- We have a number of provisions in place for the suppression of the financing of terrorism.

- First of all, the Criminal Act stipulates the following terror-related activities as a crime, and its Articles 30-32 rule that any activities providing funds for these crimes shall be punished as an act of complicity in a crime:

  - crime of assault against foreign sovereigns (Article 107); crime of the formation of criminal groups (Article 114); crime of obstruction of performance of official duties (Articles 136 and 144); crime of destruction of public goods(Articles 141 and 367); crime of setting fire to public structures (Article 165); crime of use of explosives(Article 119); crime of obstruction of train and vessel traffic(Article 186); crime of obstruction of use of drinking water (Article 192); crime of coercion, of coercion by hostage, of injury by hostage, and of murder by hostage (Article 324); crime of violence (Article 260); crime of inflicting bodily harm and violence (Article 257); crime of murder (Article 250); crime of false arrest and illegal confinement (Article 276), and so forth.

- The following special laws also stipulate terror-related activities as a crime, and Articles 30-32 of the Criminal Act rule that any activities providing funds for these crimes shall be punished as an act of complicity in a crime:

- Act of the Punishment of Violent Actions, etc: crime of the formation of criminal groups and crime of fund-raising activities for criminal groups (Article 4); crime of assisting criminal groups (Article 5)

- Act on the Aggravated Punishment of Specific Crimes: crime of kidnapping and inducement (Article 5-2)

- Act on the Control of Firearms, Knives, Explosives etc.: crime of non-licensed manufacture, sale, and trade of firearms, etc (Article 70)

- Aviation Act: crime of incurring peril on a plane (Articles 156-158)

- Safety of Aircraft Operation Act: crime of hijacking a plane (Articles 8-12)

• In particular, if the act of financing terrorism is intended to supply funds to criminal organizations, it shall be punished as a crime in accordance with paragraph 2 of Article 5 of the Act on the Punishment of Violent Actions etc.

B. Please report on the content of the Anti-Terrorism Bill currently before the Parliament of the Republic of Korea, and on its progress through Parliament.

• Status of legislation of the anti-Terrorism Bill

- On 27 November 2001, the Council of Ministers endorsed the draft bill and the President signed it.

- On 28 November 2001, the draft bill was submitted to a number of relevant Committees of the National Assembly; Intelligence, Legal Affairs, Finance and Economy,

Defense, Administration, Reunification and Foreign Affairs and Trade

- In February 2002, the Committees of Finance and Economy, Defense, Administration, Reunification and Foreign Affairs and Trade completed their review of the draft bill.

- On 26 February 2002, the Intelligence Committee carried out its first review of the draft bill and the opposition party submitted an amendment to the draft.

- On 11 March 2002, the Intelligence Committee held a public hearing, inviting experts on terror-related issues.

- Presently, the Intelligence Committee remains seized of this matter.

• Main elements of the Anti-Terrorism Bill:

- to establish under the control of the President a permanent National Counter-Terrorism Council composed of relevant authorities at the Ministerial level, with the Prime Minister as its Head

- to establish a Counter-Terrorism Center composed of mid-career level officers of the relevant authorities, and a Counter-Terrorism Committee at the cities, provincial capitals, main airports and sea ports.

- to criminalize acts of terrorism, of supporting terrorism, and of forming terrorist organizations, and to define as terrorism funds all kinds of assets held by the terrorism organizations and proceeds obtained through terror-related activities.

- to criminalize the financing, mediation, preservation, and use of terrorism funds, and the laundering of terrorist funds.

- to share terror-related information with foreign governments and international organizations.

3. Sub-paragraph 1(c): Please outline the legislative provisions and the procedures for freezing the accounts and assets of persons who are under well-founded suspicion of engaging in serious criminal activity; and confiscating the assets of persons convicted of serious crimes.

- In accordance with the Article 48 of the Criminal Act, assets already provided or to be provided to all kinds of terror-related criminal activities shall be confiscated.

- The investigation agencies may collect the above-mentioned confiscated assets in the process of investigation of terrorists, terror organizations and criminals for financing terrorism funds.

- The Proceeds of Crime Act 2001 rules that criminal proceeds and funds provided to criminal organizations may be frozen or confiscated.

  - The freezing may be implemented before or after the prosecution of money-laundering activities; if collection is submitted, the court will make a final decision.

- Pursuant to the Foreign Currency Control Act, the foreign currency transactions of terrorists designated by the UN Security Council are subject to the approval of the Governor of the Bank of Korea; thereby the assets held by terrorists are virtually frozen.

4. **Sub-paragraph 1(d) : What preventive controls and surveillance measures has the Republic of Korea put in place to ensure that funds intended for the financing of terrorism are not transferred through charitable, religious or cultural organizations ?**

- The Financial Transaction Reports Act, the Proceeds of Crime Act, and the Foreign Currency Control Act are applicable to all financial actors, including individuals and charitable, religious and cultural organizations.

- The Commercial Act, Civil Act and Act on the Establishment and Operation of Public Organizations stipulate that those who wish to establish non-profit organizations such as charitable, religious and cultural organizations must register with the relevant authorities. The supervisory authorities will monitor their activities so that they can not be implicated in the terrorist or criminal activities.

5. **Sub-paragraph 2(a):**

A. How does the Republic of Korea control the establishment in its territory of para-military groups that have the potential to engage in terrorist activities ?

- Article 114 of the Criminal Act and Article 4 of the Act on Punishable Acts of Violence stipulate that organizing a criminal group constitutes a punishable act of crime.

B. Please outline the main provisions of the legislation on weapons, including, in particular, the legislative provisions and practical measures to prevent the supply of weapons to terrorist groups within and outside the territory of the Republic of Korea.

- Article 70 of the Firearms, Knives, Explosives etc Control Act prohibits non-licensed manufacture, sale, and trade of

firearms, and in accordance with Articles 30-32 of the Criminal Act, assistance through supply of weaponry to all sorts of terror-related crimes shall be punished as an act of complicity in a crime.

6. **Sub-paragraph 2(b) :**

A. Does the Republic of Korea have a body that specializes in counter-terrorism, or is that the responsibility of a number of departments or agencies? In the latter case, how is coordination between the various entities effected?

- We have the National Counter-Terrorism Council, with the Prime Minister being its Head, as a consultative and coordinating body exclusively in charge of counter-terrorism activities within the Korean government. The concerned Ministries and agencies shall implement the decisions made at the Council. (Presidential Decree No. 47 of 1999)

B. Does each agency define its strategy independently, or does it carry out measures that have been established at a higher level? Who determines that policy and, if applicable, the distribution of tasks among agencies?

- Although each authority shall provide countermeasures independently regarding terrorism-related matters falling within its own jurisdiction, decisions made by the National Counter-Terrorism Council shall be enforced through mutual cooperation.

- In order to cope with the specific terrorist incidents and to guide the proper direction in which the national counter-terrorism policy should be formulated, the Republic of Korea aims to include in the draft Anti-Terrorism Bill the establishment of the National Counter-Terrorism Council, comprising relevant authorities with the Prime Minister as its

Head. This action intends to upgrade the legal basis for the Council from Presidential Decree to legislation.

7. **Sub-paragraph 2(c) : Please outline the legislation relating to immigration control and the granting of the right of asylum, and describe how abuse of those provisions is prevented.**

- Article 11 of the Statute on Immigration Control stipulates that an entry into the country can be prohibited for a person illegally bringing firearms, knives, and explosives or providing grounds for concern that the person in question may either threaten the national interest of the Republic of Korea and/or public safety.

  - Especially, the Republic of Korea enforces strict immigration control on terrorists, including the members of Taliban and Al-Qaeda groups against whom the Security Council has imposed travel bans.

- Article 76 rules that a deliberative organ to decide on refugee status shall be set up within the Ministry of Justice and it shall conduct an appropriate review process.

- If a person is recognized as a refugee who falls under either Article 1 C (1)-(6), or Article 1 F (a)-(c) of the Refugee Convention, the recognition of the refugee status can be revoked; if it is recognized that there is concern that such a person may take an action detrimental to the interest of the Republic of Korea and its security, the return of the certificate of refugee status may be demanded.

8. Sub-paragraph 2(e) :

A. Please outline the legislation aimed at preventing and suppressing acts of terrorism.

- Such laws as designed to prevent and suppress the financing of terrorism are all applied to acts of terrorism as well. Therefore, not only the Criminal Act but other special laws like the "Punishment of Violence Act", "Punishment of Specific Crime Act", "Firearms, Knives, Explosives Control Act", "Aviation Act", "Safety of Aircraft Operation Act", "Railroad Act", "Toxic Chemical Control Act", "Atomic Energy Act" and "Protection of Military Installations Act" are all effective tools in this regard.

B. Are the relevant provisions of the Penal Code of the Republic of Korea applicable in all the following circumstances : acts committed outside the Republic of Korea by a person who is a citizen of, or habitually resident in, the Republic of Korea(whether that person is currently present in the Republic of Korea or not); acts committed outside the Republic of Korea by a foreign national who is currently in the Republic of Korea?

- Article 3 of the Criminal Act rules that this law applies to a domestic person who has committed a crime outside the territory of the Republic of Korea (the personal principle).

- Article 4 of the Criminal Act stipulates that this law applies to a foreigner who commits a crime against the Republic of Korea or the Korean people outside the territory of the Republic of Korea.

9. Sub-paragraph 3(a) : What measures has the Republic of Korea taken in the field of police cooperation ?

- We have been maintaining a steady exchange of intelligence with INTERPOL and foreign intelligence agencies to help prevent the domestic entry of terrorist suspects, possibly leading to their arrests.

- In particular, Korea, China, and Japan regularly hold as required tripartite police authority consultation meetings in order to strengthen the system to conduct cooperative investigation to combat all sorts of crime including terrorism.

  - These three countries held a meeting of Police Consultative Dialogue among themselves in Seoul on 23 April 2002, in which they agreed to set up a cooperation mechanism to share information on narcotics trafficking, organized crime, cyber crimes and passport forfeit.

10. Sub-paragraph 3(d) : Please report on the implementation in domestic law of the international conventions and protocols relating to terrorism which the Republic of Korea has ratified and indicate what are its intentions with regard to the others.

- see Appendix 1

11. Sub-paragraph 3(e) : Have the crimes set forth in the relevant international conventions and protocols relating to terrorism been included as extraditable offenses in the bilateral treaties to which the Republic of Korea is party, as provided for in a number of those conventions and protocols ?

- A majority of the crimes cited in the terrorism-related international conventions and protocols correspond to the extraditable crimes included in the bilateral extradition treaties that Korea has concluded with 16 countries.

  - The Criminal Extradition Act and the above-mentioned criminal extradition treaties stipulate that criminal acts resulting in sentences of one year or more are subject to being extraditable crimes

  - States with which the Republic of Korea has either concluded or is in the process of negotiating an extradition treaty as of 10 June 2002 :

    - Entered into force : Australia, Canada, Spain, the Philippines, Paraguay, Chile, Mexico, the United States of America, Mongolia, Argentina, Thailand, Brazil, China, New Zealand(14)

    - Concluded : in addition to the above countries, Japan(entry into force on June 21, 2002), Indonesia(16)

    - Under negotiation : Russia, Hong Kong(2)

- Pursuant to the provisions of the Act on International Judicial Mutual Assistance in Criminal Matters of 1991, the Republic of Korea exchanges and shares terrorism-related information and data with other states and provides assistance and cooperation in criminal investigations or proceedings relating to terrorist acts when necessary on the basis of bilateral

treaties on mutual legal assistance in criminal matters, and in the case that no such treaty exists between the states involved, on the basis of the principle of reciprocity.

12. **Sub-paragraph 4: Has the Republic of Korea had addressed any of the concerns expressed in paragraph 4 of the Resolution ?**

- We have participated in a number of regional meetings to discuss forms of regional cooperation against terrorism:

  - The 11th Meeting of the CSCAP Working Group on Comprehensive and Cooperative Security (4-5 February 2002, Kuala Lumpur)

  - CSCAP Study Group Meeting on Terrorism (24-26 March 2002, Kuala Lumpur)

  - ARF Workshop on Financial Measures Against Terrorism (25-26 March 2002, Hawaii)

  - ARF Workshop on the Prevention of Terrorism (17-19 April 2002, Bangkok)

  - ARF Inter-sessional Support Group on Confidence-Building Measures (22-24 April 2002, Hanoi)

  - The 11th Meeting of the CSCAP Working Group on Transnational Crime (13-14 May 2002, Shanghai)

  - Conference on the Global Agenda in Asia and Europe: Transnational Crimes and Prospects for Asia-Europe Cooperation (27-28 May 2002, Copenhagen)

13. Other matters:

Could the Republic of Korea please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution.

- see Appendix 2.